

## COMMITTEE OF THE WHOLE

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Jay Furfaro, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, February 5, 2014, at 12:02 p.m., after which the following members answered the call of the roll:

**Excused: Honorable Mel Rapozo**

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Bynum, and carried by a vote of 6:0:1 (Councilmember Rapozo was excused), the Minutes of the January 22, 2014 Committee of the Whole Meeting was approved.

Bill No. 2497, Draft 1      A BILL FOR AN ORDINANCE TO AMEND THE  
KAUAI COUNTY CODE 1987, AS AMENDED, BY  
ADDING A NEW ARTICLE TO CHAPTER 4,  
RELATING TO THE REGISTRATION AND  
REGULATION OF LOBBYISTS (This item was  
deferred to March 5, 2014)

Chair Furfaro: On that note I would like to ask you, I have some sample forms being drafted right now and is coming off the press. I would like to ask for a five (5) minute recess so you actually have the format in front of you for the actual filing. Councilmember Yukimura.

Chair Furfaro: Yes.

Chair Furfaro: I think that is fair and reasonable.

Ms. Yukimura:

Thank you.

Chair Furfaro: So I am going to follow up on getting the forms right now by having this recess then we will come back.

There being no objections, the Committee recessed at 12:04 p.m.

The meeting was called back to order at 12:12 p.m., and proceeded as follows:

Chair Furfaro: Thank you everyone. We are back from that short break. Thank you for the courtesies extended to myself. I have circulated to you drafts of the forms, both the reporting forms to register as a lobbyist. It is almost exactly similar to what the State uses as well as the financial reporting for those registered lobbyist. I have asked Scott to put them on for the audience. We can take a look at them here. The reporting of your organization and the relative information and mailing location, I am talking backwards here. I do not know if it is picking up. It is really all on the form. If we can flip it over here you will see the actual date recorded for the actual registering of the information required. Up at the top it is beginning some of the financial information. The next page, second page, indicates a line item as to what a certain contributions or gifts would be for those. And I do want to point out on this line as we identify gifts given, it is also a responsibility of the political, who actually receives the gift to put that in their disclosure as well. I think we can flip it over. There are these subcategories of what you are lobbying for in particular. You could be dealing with transportation issue, you could be dealing with a parks issue and so forth but there is a series of about sixteen (16) boxes there that are subcategories for the actual reporting and the form is pretty self explanatory from there. Mr. Chock has a...as we deferred this in the past, we have a couple of amendments to introduce and I will give Mr. Chock the floor.

Mr. Chock: Thank you, Chair. I was asked to introduce this on behalf of Council Chair Furfaro, a floor amendment regarding registration of lobbyist requirements. You have it before you and I will read it for you at this time. It is under "a" in addition to a sentence that says "the registration form shall be available at the Office of Boards and Commissions and its website" and the other addition would be under Section 4-5.6, manner of filing public records item number one (1). Which basically mentions that the registration form can be hand delivered, mailed or E-mailed and specifically the verbiage here "at the address provided on the registration form, transmitted via facsimile to the number on the registration form or transmitted via electronic mail to the E-mail address provided on the registration form." Those are the amendments that are being introduced.

Mr. Chock moved to amend Bill No. 2497, Draft 1 as circulated, as shown in the Floor Amendment which is attached hereto, seconded by Mr. Kagawa.

Chair Furfaro: I do want to say one thing to you. As it relates to the form although the reporting is done three (3) times a year and because it is a modified State form you will see that in the first sixty (60) days of January you have to do the reporting for January/February. Then you have a period to do reporting for March and April and then you have the final which is the period collectively for the last eight (8) months of the year. That is kind of measured against when the legislature is in session. That is the reasons for those not being equal quarters but rather two (2) month increments for the first four (4) months of the year, when the legislature is in session and then the final reporting at the end of the year for eight (8) months. Tim, go ahead.

Mr. Bynum: Thank you for this amendment. It makes it more workable and I appreciate the work. I only have one (1) question which is that you designate the Office of Boards and Commissions and is that in consultation with the Administration? Are they okay with that?

Chair Furfaro: I have been working closely with Paula from the very beginning of this Bill and I do believe that they are more than willing and I have gotten a comment from the County Attorney's Office and they have said that would be the appropriate measure.

Mr. Bynum: Thank you and I only ask that question because the Mayor released an opinion that said we cannot designate which departments that might be a separation of powers issue. I just want to make sure that is not the instance here.

Chair Furfaro: I do not think that I got any response from legal that I needed to revisit that piece but we can certainly ask Mr. Castillo on that.

Mr. Bynum: I do not think we need to delay action for that answer. I just wanted to pose it. Thank you.

Chair Furfaro: JoAnn and then Mr. Hooser.

Ms. Yukimura: These forms are not going to part of the law are they? Are you showing the forms to us as potentially the forms that would be used?

Chair Furfaro: It is the expected forms to be registered if the law itself indicates that the agency that you are registering with is Paula's department, Boards and Commissions.

Ms. Yukimura: So that means that the lobbying reporting period could be changed to match our calendar cycle because it really is a long time between May and December and I think we may want more reports during that period. You could even have quarterly reports of equal periods.

Chair Furfaro: We could do it more quarterly. The fact of the matter is I think the activities of the lobbyists will probably be more along the lines of things that they would like to accomplish in County that are parallel to what is going on in the State. That is the only reason. For example, Bill No. 2491. There are Bills that have been presented in the early part of the session and people lobby us for our Bills that kind of align themselves with the agriculture department at the State. But I am open to it.

Ms. Yukimura: I am just thinking that say we are in the throws of dealing with a Bill like 2491 in August then we might really have updated lobbying expenditure reports at that time. One of the things is that in voting for this amendment we are not tying ourselves to this exact interval of time on the form then there is flexibility.

Chair Furfaro: I think that there could be flexibility. We tried to align the general comments on the reporting to the State standard but it is something that can be ongoingly updated, upgraded, and changed.

Ms. Yukimura: Because we have year around Council meetings and we are not in recess between May and December so we will want current information during that period. My only other question is as a procedural one, I know we have already talked about not acting on this amendment until after lunch break. Will we also be able to have testimony before lunch too?

Chair Furfaro: I would hope that if anyone wanted to speak on the Bill we would take before we broke for lunch.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Just briefly, some of my concerns Councilmember Yukimura has already articulated in terms of the time frame. I would think that a more uniformed time frame throughout the year might be something to consider and also the fact that the law actually...the Ordinance is here and so I do not actually know if it says any time frames on the Ordinance, I would have to look at it again closely. Are we going to do a final vote today or are we anticipating deferring it one (1) more time?

Chair Furfaro: I have no problem with a deferral especially if we want to tie the concept of the form to the final Ordinance and that is one of the reasons I brought it to your attention. The two (2) -two (2) month periods were timed with the legislature and the last eight (8) months was because they are out of session. But I do think that there are a lot of similarities in lobbying for the same efforts to make things be compatible.

Mr. Hooser: And I agree with you. I know that we have been working on this for a while but I would appreciate another deferral to look at it closer. Since there is really no urgency, we want to get it done but another deferral, yes, I would appreciate.

Chair Furfaro: I would take some testimony today and if we are going to plan to defer, which I have no problem, I do not think we necessarily need to come back after lunch if we are going to defer. Everybody will have time. Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. My understanding is that we are last County to adopt this kind of form.

Chair Furfaro: Yes, unfortunately.

Mr. Kagawa: So if I can during that deferral time, if we can check with the other Counties and see what their time periods are. They might be able to help us or might not. Thank you.

Chair Furfaro: Good point and we could solicit their reporting systems and share it over the next two (2) weeks. Good point. Mr. Chock.

Mr. Chock: I just have a general question, I am not sure if Paula might be able to answer this or not but I understand that this information will be housed on the website for the public to see.

Chair Furfaro: The forms will be filed accordingly but I believe as it is practical with the Office of Information Practices, someone would solicit this information and they would get it in a ten (10) day period.

Mr. Chock: I see. That answers my question. Thank you.

Chair Furfaro: We could bring Paula up before we take any other testimony. Paula, it sounds like we are going to defer this for another two (2) weeks so that people can digest the concept of the reporting form. Your comments would be appreciated now and any questions from the Councilmembers.

There being no objections, the rules were suspended.

PAULA M. MORIKAMI: Paula Morikami, Office of Boards and Commissions. I see no problems in these amendments that were presented today. Peter Morimoto and I met with Mandi from Information Technology (IT) to make sure that all of this could be done and there are no problems there. Regarding the lobbyists expenditure form that I just reviewed, if you look at Section 4.4-5.5 the reporting says twice a year. So that would have to be somehow compatible with what you have. That is all I have to say.

Chair Furfaro: We only picked up on the first two (2) reports, which are every two (2) months but the reality it would have to be consistent even describing if we go to a quarterly or if we go to six (6) reports of two (2) months. It would have to conform, yes.

Ms. Morikami: Right now it says, "July 31<sup>st</sup> and January 31<sup>st</sup>."

Chair Furfaro: Any questions for Paula? JoAnn you have the floor.

Ms. Yukimura: The proposed Bill also talks about posting these reports on a website within ten (10) business days of receipt. Logistically, that is what you talked to Mandi about?

Ms. Morikami: Yes.

Ms. Yukimura: So you do not see any problems with doing that?

Ms. Morikami: Peter and I met with her and she had no problems. In fact, she thought it would be a rather simple process and user friendly.

Ms. Yukimura: Very good. Maybe we can do that with pesticide reports too.

Chair Furfaro: Paula, thank you very much. On that note, since we will defer, and once we do defer there is no further discussion. I would like to take it up for public testimony at this time. This will be coming back in two (2) weeks Jan but if you want speak now.

JAN TENBRUGGENCATE: I am Jan TenBruggencate speaking as an individual. I reviewed Bill No. 2497, Draft 1 and the floor amendment. I support lobbyist registration that identifies people paid to influence public opinion, but in order to be effective, registration needs to be transparent, fair, simple and supported by staff. This Bill fails on all four (4) counts. It lacks the transparency on several grounds. It provides loopholes. It is so complicated that people will find ways to avoid registration and I will make the point that the Big Island Bill, which is very similar to this, there was a report last September in the Tribune Herald that pointed out of thirty-four (34) people who had filed as lobbyists, more that ninety percent (90%) were in violation of the filing requirements, in my opinion because the filing requirement are so onerous. And they made note in that story that many lobbyist are not registered there. It seems to me if the point is to register lobbyist and make the information available, you should write a Bill that people can bring themselves to comply with. If a local professional is engaged to lobby, they will have to file an opening report or a report if they are promoted or change jobs, two (2) financial reports, and now it sounds like maybe six (6) financial reports per year and annual report and closing report when they leave the post. And why would they file those reports? Because you have four (4) single-spaced pages of language of how to punish them for not filing. Those four (4) single-spaced pages of enforcement language. The file cabinets are full of mandatory reports that are going to be overseen by a volunteer ethics commission, that meets for a couple of hours a month. They will have no additional staff as I understand it. Dan Mollway, who used to run the Ethics Board said it is probably inappropriate to ask an ethics commission to handle lobbying. It should be a separate panel, it is just too much work. I hope you will forgive a friendly, if cynical aside, this Bill written by lawyers for the County Council exempts lawyers and people selected by the County Council but does not exempt the dozens of other dedicated professionals; doctors, planners, accountants, coaches, engineers, ecologist, paid environmental folks who might be asked by someone to appear before county government. Once again, I support lobbyist registration. This County Council, twenty (20) years had lobbyist legislation. It was a clipboard with room for a lobbyist's name. I can remember as a newspaper reporter going and look at it. It was not thirty (30) feet from this room so it was readily accessible to everyone. Any member of the public or government official could check, look at it and readily understand it. It was simple. It was transparent. It was fair. It required no additional staffing. It is pretty much what Honolulu and Maui do today and it is all you need.

Chair Furfaro:

Thank you very much, Jan.

Mr. TenBruggencate: There are numerous other pieces in this legislation that are problematic, if you are going to pass something fundamentally like this law, there are numerous pieces that need to be fixed, some of which are in violation of the County Charter in my opinion and others of which are fundamentally unworkable. They do no function the way our County works. Thank you.

Chair Furfaro: Jan, so what I am hearing from you, we will do the following. I will defer this for a month and I will ask the County Attorney for another review. But what I am hearing in your suggestion is keep it simple.

Mr. TenBruggencate: Yes. If you want people to comply, keep it simple. One of the loopholes is you do not have to file until five (5) days after you become a lobbyist. It creates a situation where a lobbyist for a big company, let us say American Tobacco, which as far as I know is not doing any lobbying on Kaua'i, flies in from Washington D.C., paid one thousand dollars (\$1,000) an hour, lobby the County Council on some piece of legislation, they do not legally have to file their lobbyist registration for five (5) days so they can come in, do their lobbying, fly back out. How are you going to catch them? My preference would be a requirement that you do not let anyone speak from this podium until they have filed and that information is available to anybody in this room by walking a short distance. My suggestion would be similar sign-up sheets be available here, at the Planning Department, which sees a lot of lobbying, maybe at the Mayor's office because the Mayor is lobbied on a regular basis and lobbyist should be required to sign in on a document that anyone can look at immediately and before they are allowed to lobby.

Chair Furfaro: I hear your options, your options are to make it much more simple maybe have them only report two (2) times a year rather than six (6). Have them register before they get to speak. All good points but some of the financial information and who their other clients are requires some detail and gives us a better chance to understand their lobbying culture. Who else they are representing and so how much bureaucracy do you want or do you just want to know who is here doing what and a home address?

Mr. TenBruggencate: My sense is that if you are going to require the financial disclosure, and I do not object to it, you should look carefully at that language and what kind of disclosure requiring. Some of the disclosure that is being required, gifts to Councilmembers is illegal. You should not be accepting gifts and they should not be giving them to you.

Chair Furfaro: But Jan then I said that in the very beginning. The fact of the matter is that if they give a gift it is the politicians that have to disclose it. That is their *kuleana*.

Mr. TenBruggencate: That is true but this requires that it be disclosed as well. This also requires that campaign contributions be disclosed and that is already covered by the campaign spending so it is redundant and I am not sure that we want to just keep piling on new regulations.

Chair Furfaro: Your points are well taken.

Mr. TenBruggencate: Anybody else?

Chair Furfaro: Yes, somebody else is going to have some time with you here. Hold on just a second. JoAnn.

Ms. Yukimura: So you said that there is another model with Honolulu and Maui?

Mr. TenBruggencate: Maui's lobbyist disclosure language takes up a little less than one (1) page in their ethics regulations and it does not require financial disclosure. It is primarily the lobbyist identifies themselves, who they work for, and what they are lobbying. My sense is that is the key information. That is really simple and it is the key information the public needs. Who is getting paid to lobby government?

Ms. Yukimura: I like the idea of not letting people testify until they show that they have registered as lobbyist. I am thinking that given the input we might want to have a longer deferral. You are right, Chair, I think you suggested a month. Is there going to be a sub-committee or Councilmembers who are going to work on these amendments?

Chair Furfaro: See where we are at already that we are going to create another sub-committee to review a rule...the choices you are telling us, Jan, is make it simple or if you create all of this new reporting, staff it accordingly and have it fundamentally reviewed in detail.

Mr. TenBruggencate: Yes. The language of this Bill as it stands today is very similar, it is actually has more requirements than the State ethics law. The State ethics law is staffed a State Ethics Commission with a million dollar (\$1,000,000) budget and nine (9) staffers. It is my understanding that there is no proposal to give our Boards and Commissions office any additional staff and those guys are full-time employees, you are asking a volunteer ethics commission that meets a couple hours a month to oversee all of this stuff and in some situations to undertake fairly rigorous investigations and prosecutions of individuals in our community. That takes resources.

Chair Furfaro: No and I agree with that but nine (9) years ago we did not have the staff level that we have right now or the seven hundred eighty thousand dollars (\$780,000) we have in the budget for Boards and Commissions. Let us get to a point that we have not said what we have budgeted for Boards and Commissions now have met their maximum as it relates to responsibilities because a decade ago we did not even have a department of Boards and Commissions, in all fairness.

Mr. TenBruggencate: I agree with you. I will also attest as a member for several years of the Charter Review Commission that I deal on a regular basis with the Boards and Commissions office and they are currently fully tasked. You do not walk in that office and see staff not working.

Chair Furfaro: That is not what I was implying. We never did a time and motion study for that department either and I appreciate your feedback as a journalist that in your opinion they are fully tasked. They may not be fully tasked in my opinion until I have a professional study of time management but we have time now. We are going at least a month to revisit some of the suggestions that you made and we will have some discussion if we broaden the group that is working on this Bill because at this point it was introduced by me and it was given some input from Mr. Hooser that I appreciate. I hear your message maybe we have a long way to go yet.

Mr. TenBruggencate:

Thank you, Council.



Chair Furfaro: Is there anyone else that would like to testify on this before I call it back to order for our own discussion? No?

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Mr. Hooser then Mr. Bynum.

Mr. Hooser: I appreciate the extra time to look at it and I appreciate the comments from the public. For me, a couple of different things, certainly we need to know if someone is testifying whether they are getting paid to testify but also the financial disclosure I think is very, very important. Lobbyist are often used as pass-throughs for campaign donations and so I would like to know if lobbyist "A" donates money to candidates, who their client is and who is actually providing the money. I think the financial disclosures are very, very important. I think that keeping it as simple as possible is also...and I think looking at the requirements and funding the staffing, that kind of thing is important but it is my understanding that the primary thing we are asking and the most important in some ways is the posting for public transparency. I think we were told that is rather easy to do. The benefit of this in many ways are self enforcing because if it posted online the public can look, the public can see and it is not being accommodated then the complaints will come through. The most important thing is transparency and we must have those financial considerations in there and I would be happy to look at this closer myself and encourage all the Councilmembers to do so and come up with other amendments. Thank you.

Chair Furfaro: Mr. Bynum, you have the floor.

Mr. Bynum: As I said earlier I think this is an important Bill and I very much appreciate the Chair bringing it to the floor and Mr. Hooser working on it. It is clear the Chair is open to collaboration and openness on this. He has responded to testimony from Jan appropriately. We have such wonderful community members who testify here and in this instance Jan is extremely knowledgeable and the Chair, like all of us are going to want to take his thoughts and perhaps make modifications but I do not think we need a sub-committee. I think the Chair has already shown that he is open to working with any other member collaboratively to get the best Bill we can. I agree with the statements that certain elements I do not think are obsessive, Jan and just need to be there. The world has changed since fifteen (15) years ago but I sure want that element where a member can go look at the clipboard and get it that quickly and easily. I am sure your input is going to make some changes here and it is very much appreciated. Thank you.

Chair Furfaro: Any further comments? Before I ask I would look to deferring this for a month. I am looking at the calendar for March 5, 2014 so when we get to a motion to defer we will talk about March 5, 2014. In the mean time I would like to reiterate that I am open to any comments but you need to find yourself following all the rules about those particular pieces and I will continue to work very closely with Mr. Hooser on this. Jan, your comments were well taken but it is kind of like doing your taxes, there is the short form and there is the long form so we will kind of leave it at that for right now and I look for a date specific deferral.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Rapozo was excused*), Bill No. 2497, Draft 1, was deferred to March 5, 2014 Committee of the Whole meeting.

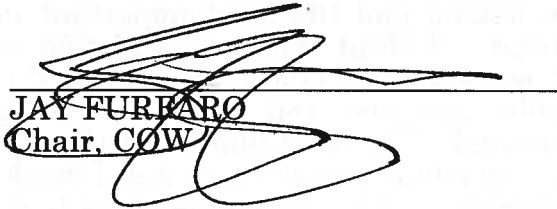
There being no further business, the meeting was adjourned at 12:42 p.m.

Respectfully submitted,



Lori L. Marugame  
Council Services Assistant I

APPROVED at the Committee Meeting held on March 5, 2014:



JAY FURRARO  
Chair, COW

(February 5, 2014)

FLOOR AMENDMENT

Bill No. 2497, Relating to the Registration and Regulation of Lobbyists

Introduced By: MASON K. CHOCK, SR. (By Request)

1. Amend Bill No. 2497, Draft 1, by amending Section 4-5.3 in Section 2 to read as follows:

**"Sec. 4-5.3 Registration of lobbyists, requirements.**

(a) Every lobbyist shall file a registration form with the Board of Ethics within five (5) business days of becoming a lobbyist. The registration form shall be available at the Office of Boards and Commissions and on its website.

(b) The registration form shall require the lobbyist or appropriate officer of lobbyist if a corporation or appropriate manager or member if the lobbyist is a limited liability company, to provide and certify under oath as true and correct the following information:

(1) The name, business mailing address, and business telephone number of the lobbyist.

(2) The name and principal place of business of each person by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears or works and a written authorization to act as a lobbyist from each person by whom the lobbyist is employed or with whom the lobbyist contracts.

(3) The subject areas on which the lobbyist expects to lobby.

(c) Prior to testifying before the County Council or administrative agency, a lobbyist shall disclose his or her status as a lobbyist and the person on whose behalf the lobbyist is appearing.

(d) A lobbyist shall report any change in any of the information contained in the registration statement within ten (10) business days after the change has occurred.

(e) A lobbyist shall file a notice of termination within ten (10) business days after the lobbyist ceases the activity which required the lobbyist's registration. The lobbyist and the employer of the lobbyist shall remain subject, however, to the requirements of Chapter 97 for the period during which the registration was effective.

(f) This Article shall not apply to:

(1) Any individual who represents oneself and not any other person before the County Council or administrative agency; provided that such individual must nonetheless file a statement of expenditures if the individual meets any of the provisions of Section 4-5.5(a)(2) and (3);

(2) Any federal, state, or county official or employee acting in the official's or employee's official capacity;

(3) Any newspaper or other regularly published periodical or radio or television station (including any individual who owns, publishes, or is employed by a newspaper or periodical or radio or television station) while publishing in the regular course of business news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislative or administrative action;

(4) Any attorney who advises the attorney's clients on the construction or effect of proposed legislative or administrative action; provided that such attorney must nonetheless file a statement if the attorney meets the reporting statement requirements set forth in Section 4-5.5(a)(2) and (3); and

(5) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the County Council, administrative agency and executive branch of County government, and who makes an occasional appearance at the request of the County Council or an administrative agency, even though receiving reimbursement or other payment from the County Council or administrative agency for the appearance."

2. Amend Bill No. 2497, Draft 2, by amending Section 4-5.6 in Section 2 to read as follows:

**"Sec. 4-5.6 Manner of filing; public records.**

All statements required by this Article to be filed with the Board of Ethics:

(1) Shall be deemed properly filed when hand delivered; [or deposited in an established post office] mailed within the prescribed time, duly stamped, registered, or certified, and directed to the Board of Ethics at the address provided on the registration form; transmitted via facsimile to the number provided on the registration form; or transmitted via electronic mail to the e-mail address provide on the registration form; provided, however, in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the Board of Ethics of its nonreceipt; and

(2) Shall be preserved by the Office of Boards and Commissions for a period of four (4) years from the date of filing; and shall constitute part of the public records of the Office of Boards and Commissions and

(3) Shall be posted on a website maintained by the Office of Boards and Commission within ten 10 business days of receipt by the Board of Ethics."